

NOTICE OF FINAL RULEMAKING
MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS
P-27 VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

PREAMBLE

- 1. Sections Affected**

P-27 Vehicle Parking and Use on Unstabilized Vacant Lots	<u>Rulemaking Action</u> New
--	--
- 2. Statutory authority for the rulemaking:**

Authorizing Statute: A.R.S. § 49-474.01(A)(7)
Implementing Statute: A.R.S. § 11-251.05
- 3. The effective date of the rule:**

Date of Adoption: February 20, 2008
- 4. List of all previous notices appearing in the Register addressing the rulemaking:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 3375, October 5, 2007.
Notice of Proposed Rulemaking: 13 A.A.R. 3711, November 2, 2007.
- 5. Name and address of department personnel with whom persons may communicate regarding the rulemaking:**

Name: Kathleen Sommer or Jo Crumbaker
Maricopa County Air Quality Department
Address: 1001 N. Central Ave. Suite 595
Phoenix, AZ 85004
Telephone: (602) 506-6706 or (602) 506-6705
Fax: (602) 506-6179
E-Mail: kathleensommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

- 6. An explanation of the rule, including the department's reasons for initiating the rule:**

In an effort to help Maricopa County attain the National Ambient Air Quality Standards for particulate matter less than 10 microns (PM₁₀), the Arizona Legislature recently enacted Senate Bill 1552 which provides measures committed to reduce PM₁₀ emissions. One of these measures prohibits vehicle parking and use on unstabilized vacant lots (A.R.S. §§ 9-500.27 and 49-474.01(A)(7)). Responding to this commitment, Maricopa County Air Quality Department prepared a new ordinance (P-27) that restricts vehicle parking and use on

unstabilized vacant lots, and imposes a penalty to the vehicle operator for violation of the ordinance. The penalty consists of a Class 3 misdemeanor and requires the vehicle operator to attend at least eight but not more than twenty-four hours of a community restitution course related to the off-highway operations of motor vehicles.

The measures in this ordinance will help reduce PM₁₀ emissions which are required for this region to implement a Five Percent Plan for PM₁₀. Since the region did not attain the PM₁₀ standard in December, 2006, a Five Percent Plan for PM₁₀ demonstrating 5% reductions per year in emissions was submitted to EPA.

Section By Section Explanation of the Ordinance:

SECTION 1 - GENERAL

Section 1 - A Includes the ordinance purpose which restricts all vehicle parking and use on unstabilized vacant lots.

Section 1 - B Includes applicability of the ordinance to vehicle parking and use in the unincorporated sections of Area A that are within Maricopa County.

SECTION 2 - DEFINITIONS

Section 2 - A Includes the ordinance definition of the legal land description of Area A in the federal township-range format so that it coincides with the description of Area A found in Arizona Revised Statutes (A.R.S.) §49-541(1).

Section 2 - B Includes the ordinance definition of a designated or opened trail system which is designated or opened by a government land management agency.

Section 2 - C Includes the ordinance definition of a road or highway which is maintained by a municipality and open for public use for purposes of vehicular travel. The definition includes designated or opened trail systems and surface roads regardless of surface composition and any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.

Section 2 - D Includes the ordinance definition of vacant lots which coincides with the vacant lot definition found in Maricopa County Rule 310.01. This other definition defines

vacant lots as land that is undeveloped, contains no buildings or structure, partially developed lots, or not a road or highway.

Section 2 - E Includes ordinance definition of a vehicle as a self propelled device excluding devices moved by human power or used on tracks.

SECTION 3 - REQUIREMENTS

Section 3 - A Describes ordinance restriction of vehicle parking and use on unstabilized vacant lots.

Section 4 - VIOLATIONS, NOTICES, AND PENALTIES

Section 4 - A Includes penalty of class 3 misdemeanor for violation of ordinance.

Section 4 - B Includes penalty for violation, in addition to or in lieu of a fine, an order to perform at least eight but not more than twenty-four hours of a community restitution course related to the off-highway operation of motor vehicles.

Section 4 - C Includes, for violations of this ordinance, use of a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court.

Section 5 - EXEMPTIONS

Section 5 - A Includes exemption for the property owner if the exemption does not violate any other applicable laws.

Section 5 - B Includes exemption for a site with a permit issued by the Control Officer for the control of fugitive dust from dust generating operations.

7. Demonstration of compliance with A.R.S. § 49-112:

Under A.R.S. § 49-479(C), a county may not adopt a rule or ordinance that is more stringent than the rules adopted by the Director of the Arizona Department of Environmental Quality (ADEQ) for similar sources unless it demonstrates compliance with the requirements of A.R.S. § 49-112.

A.R.S. § 49-112 (A) is outlined below:

When authorized by law, a county may adopt a rule, ordinance, or other regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if all the following conditions are met:

1. The rule, ordinance or other regulation is necessary to address a peculiar local condition;
2. There is credible evidence that the rule, ordinance or other regulation is either:
 - (a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible
 - (b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or other regulation is equivalent to federal statutes or regulations.

The proposed Maricopa County Ordinance - P-27 - is adopted under Arizona Revised Statutes § 49-474.01(A)(7) and recently enacted in Senate Bill 1552. Therefore, a demonstration of compliance with A.R.S. § 49-112 as required by the County's general grant of rulemaking and ordinance authority in A.R.S. § 49-479 does not apply to this action.

8. Reference to any study relevant to the rule that the agency reviewed and either relied or did not rely on in its evaluation or justification for the rule; where the public may obtain or review each study; all data underlying each study, and any analysis of the study and other supporting material:

Not applicable.

9. Showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

10. Summary of the economic, small business, and consumer impact:

This ordinance provides a disincentive to the operators of vehicles to trespass on vacant lots that are unstabilized and saves property owners from spending money to repair damage to their property from vehicle activity. Secondly, the measures in this ordinance help obtain the air quality benefits and consequent health benefits for the community from the lower emissions of Particulate Matter. This section will look at:

- Emission reductions of particulate matter from this P-27 ordinance implementation; and
- Identification of the costs and potential physical health, welfare benefits.

(a) Emission Reductions

Fugitive dust particulate emissions from vehicles operating on unpaved areas were estimated by Maricopa Association of Governments (MAG) based on the acres of disturbed land devoted to unpaved parking areas.

The specific methodology, calculations, and assumptions for each component of the emissions calculation for vehicular use and parking on vacant lots is described in the Maricopa County 2005 Periodic PM₁₀ Emission Inventory for the Maricopa County Non-attainment Area- Section 3.5.9. Factors used to calculate emission rates for unpaved parking areas are EPA's AP-42 emission rates and GIS applications to the 2004 MAG land use data of the total acres of vacant land in the Maricopa County portion of the PM₁₀ non-attainment area. The results for the PM₁₀ non-attainment areas and Maricopa County are summarized in tons per year.

According to the Maricopa County 2005 Periodic PM₁₀ Emission Inventory (§3.5.9) the Maricopa County Nonattainment Area emissions from vehicles traveling in unpaved parking areas are as follows:

- PM₁₀ NAA=3009 tons/yr annual emissions.
- PM₁₀ NAA=16,490 lbs/day daily emissions.

There are two sources of PM₁₀ emissions from vacant lots:

1. Trespass trips from the vehicle;
2. Windblown emissions from the disturbed area on the lot.

Emissions from two weekly trips by light-duty vehicles are estimated to produce 11.6 pounds of PM₁₀ per year on a 3-acre lot. By eliminating trespass trips, the emission reduction achieved by this measure would be 11.6 pounds of PM₁₀ per year per average vacant lot. Windblown emissions are estimated to be 75.8 pounds per year for a lot where the disturbed area is limited to a single 20-foot wide track across the lot. By eliminating these two sources, the emission reduction achieved by this ordinance would be 87.4 pounds of PM₁₀ per year per average vacant lot. (MAG, Analysis of Particulate Control Measures; Cost Effectiveness, April 18, 2007)

There are over 4,000 vacant lots in the Maricopa County PM₁₀ nonattainment area which translates to a reduction of 174 tons of PM₁₀ per year or a 5.8% reduction of the total non-attainment area PM₁₀ emissions obtained from eliminating vehicle parking and use on vacant lots. (2005 Periodic PM₁₀ Emission Inventory Maricopa County, AZ §3.2.6

(b) Costs and Health Benefits

Minimum costs to restrict the vehicle owners from trespassing on vacant lots were determined from a review published in the Salt River PM₁₀ State Implementation Plan (SIP) prepared by Arizona Department of Environmental Quality (ADEQ). After study it was determined that the installation of a rock barrier would be the least expensive method of prohibiting vehicle parking and use on vacant lots. The cost of installing a rock boulder barrier was estimated to be \$1,342 per year per lot, based on a survey conducted by ADEQ in support of the Salt River SIP. There are over 4,000 vacant lots in the Maricopa County PM₁₀ nonattainment area. The rock barrier for each lot is assumed to completely eliminate trespass emissions on vacant lots at potential cost to lot owners of \$5,368,000.

Community health benefits result from the implementation of this proposed P-27 ordinance when ambient emissions of Particulate Matter are reduced. The emission reductions of PM reduce the physical health and welfare effects and result in a number of economic and social consequences, including:

1. Medical Costs: These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss: This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and care giving: These include special care giving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and she or he may require care giving.
4. Other social and economic costs: These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members. There are many health benefits for the general public as a result of the enforcement of this Particulate Matter control measure. Health benefits can be expressed as avoided cases of PM related-health effects and assigned a dollar value.

Summary

There are over 4,000 vacant lots in the Maricopa County PM₁₀ nonattainment area which translates to a reduction of 174 tons of PM₁₀ each year from the P-27 Ordinance measures. This is 5.8% of the total non-attainment area PM₁₀ emissions reduced from eliminating vehicle parking and use on vacant lots. (2005 Periodic PM₁₀ Emission Inventory Maricopa County, AZ §3.2.6). A good portion of the dollar savings and benefits observed from the proposed P-27 ordinance measures is from health benefits which can be expressed as avoided cases of PM related-health effects and the associated costs of care. (U.S. EPA, "The Benefits and Costs of the Clean Air Act 1990 to 2010," Chapter 6, "Economic Valuation of Human Health Effects,").

The P-27 ordinance could increase the Maricopa County Air Quality inspection program monitoring, record keeping and reporting burdens. These additional inspection and judicial costs are likely to be offset by the considerable reduction in burdens on community health care, as described above. This decreased burden of community health care helps offset increased public agency costs and can also be expressed as avoided cases of PM related-health effects. The 5.8% PM₁₀ emission reduction resulting from the implementation of this proposed Ordinance equates to millions of dollars per year cost savings from community health benefits from the lower emissions of Particulate Matter. (U.S. EPA, "The Benefits and Costs of the Clean Air Act 1990 to 2010," Chapter 6, "Economic Valuation of Human Health Effects,").

11. Name and address of department personnel with whom persons may communicate regarding the rulemaking:

Name: Kathleen Sommer or Jo Crumbaker
Air Quality Department
Address: 1001 N. Central Ave., Suite #595,
Phoenix, AZ 85004
Telephone: 602-506-6710 or 602-506-6705
Fax: 602-506-6179
E-Mail: kathleensommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

12. Description of the changes between the proposed rule, including supplemental notices and final rule:

Section 2(C): Added to the definition of road or highway “any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use”. The definition of road or highway now reads: “The entire width between the boundary lines of every way publicly maintained by the federal government, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel. For purposes of this ordinance, the term “road or highway” also includes designated or opened trail systems, service roads regardless of surface composition, and any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.”

13. A summary of the comments made regarding the rule and the department response to them:

No formal comments were received.

14. Any other matters prescribed by the statute that are applicable to the specific department or to any specific rule or class of rules:

Not applicable

15. Incorporation by reference and their location in the rule:

None

16. Was this rule previously an emergency rule?

No

17. The full text of the rule follows:

MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

P-27

VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

SECTION 1 - GENERAL

- A. PURPOSE
- B. APPLICABILITY

SECTION 2 - DEFINITIONS

- A. AREA A
- B. DESIGNATED OR OPENED TRAIL SYSTEM
- C. ROAD OR HIGHWAY
- D. VACANT LOTS
- E. VEHICLE

SECTION 3 - REQUIREMENTS

- A. RESTRICTED VEHICLE PARKING AND USE

SECTION 4 - VIOLATIONS, NOTICES, AND PENALTIES

SECTION 5 - EXEMPTIONS

MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

P-27

VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

SECTION 1 - GENERAL

- A. PURPOSE:** This ordinance restricts all vehicle parking and use on unstabilized vacant lots.
- B. APPLICABILITY:** This ordinance applies to vehicle parking and use in the unincorporated sections of Area A that is within Maricopa County.

SECTION 2 - DEFINITIONS: For the purpose of this ordinance, the following definitions shall apply:

- A. AREA A** - The part of the greater Phoenix metropolitan area where specific pollution control programs are in place for ozone, carbon monoxide, and particulate matter. As defined in Arizona Revised Statutes (A.R.S.) §49-541(1), the area in Maricopa County delineated as follows:
 - Township 8 North, Range 2 East and Range 3 East
 - Township 7 North, Range 2 West through Range 5 East
 - Township 6 North, Range 5 West through Range 6 East
 - Township 5 North, Range 5 West through Range 7 East
 - Township 4 North, Range 5 West through Range 8 East
 - Township 3 North, Range 5 West through Range 8 East
 - Township 2 North, Range 5 West through Range 8 East
 - Township 1 North, Range 5 West through Range 7 East
 - Township 1 South, Range 5 West through Range 7 East
 - Township 2 South, Range 5 West through Range 7 East
 - Township 3 South, Range 5 West through Range 1 East
 - Township 4 South, Range 5 West through Range 1 East
- B. DESIGNATED OR OPENED TRAIL SYSTEM** - Roads or routes that are part of a system of trails and that are designated or opened by a government land management agency by order, sign, and/or map approved by such agency.
- C. ROAD OR HIGHWAY** - The entire width between the boundary lines of every way publicly maintained by the federal government, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel. For purposes of this ordinance, the term “road or highway” also includes designated or opened trail systems and service roads regardless of surface composition, and any

other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.

D. VACANT LOTS - Any of the following described in Section 2(D)(1) through Section 2(D)(4) of this ordinance:

1. An unsubdivided or undeveloped tract of land.
2. A subdivided residential, industrial, institutional, governmental, or commercial lot that contains no approved or permitted buildings, structures, or uses of a temporary or permanent nature.
3. A partially developed residential, industrial, institutional, governmental, or commercial lot.
4. For the purposes of this ordinance, a vacant lot is not a road or highway.

E. VEHICLE - A self propelled device and its appurtenances, excluding devices moved by human power or used exclusively on stationary rails or tracks.

SECTION 3 - REQUIREMENTS

A. RESTRICTED VEHICLE PARKING AND USE: A person shall not park or use a vehicle on an unstabilized vacant lot within the unincorporated sections of Area A in Maricopa County.

SECTION 4 - VIOLATIONS, NOTICES, AND PENALTIES

- A.** A person who violates this Ordinance is guilty of a class 3 misdemeanor.
- B.** In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of a community restitution course related to the off-highway operation of motor vehicles.
- C.** For violations of this Ordinance, the Enforcement Officer shall use a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court. The Enforcement Officer may issue a citation to persons in violation of this ordinance.

SECTION 5 - EXEMPTIONS

- A.** The property owner, person entitled to immediate possession of the property, or invitee who has lawful authority may operate such vehicles if such use does not violate any other applicable laws.
- B.** Any site that has been issued a permit by the Control Officer for the control of fugitive dust from dust generating operations.